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IN THE

Supreme Court of the United States

October Term, 1967.

No. 452

JOHN J. SCARSELLETTI,

Petitioner,

v.

AETNA CASUALTY & SURETY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

JOHN J. SCARSELLETTI,
7026 McCallum Street,
Phila., Pa. 19119
Attorney for Petitioner
(In Person).

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OCTOBER TERM, 1967.

No.

JOHN J. SCARSELLETTI,
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v.

AETNA CASUALTY & SURETY COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, John J. Scarselletti, respectfully prays this court for the issuance of a Writ of Certiorari to Review the per curiam order of the Supreme Court of Pennsylvania entered January 9, 1968, denying the appellant's petition for continuance and the appeal having been taken from an Interlocutory Order of the Philadelphia Common Pleas Court #4, heard in Common Pleas Court #10, October 19, 1967, is Quashed. By per curiam order entered February 19, 1968, the Supreme Court of Pennsylvania denied a Petition for Reconsideration thereof.

OPINION BELOW.

No opinion was filed by the Supreme Court of Pennsylvania.

No opinion was filed by the Common Pleas Court #10 of Pennsylvania.

JURISDICTION.

1. The per curiam order of the Supreme Court of Pennsylvania refusing to allow a Petition for Continuance and the appeal having been taken from an Interlocutory Order, of the Philadelphia Common Pleas Court #4, heard in Common Pleas Court #10, October 19, 1967, is Quashed, was filed January 9, 1968, and a timely Petition for Reconsideration thereof filed January 19, 1968, was denied on February 19, 1968. This Petition for Certiorari is filed within ninety days of the denial of the Petition for Reconsideration.

2. The Jurisdiction of your Honorable Court is invoked under the Provisions of 28 U. S. C., Sec. 1257(3).

QUESTION PRESENTED.

Was the court's refusal to grant Petitioner a continuance until the next session so that the records of the lower court could be made available, an opinion filed, errors made corrected and the quashing of the appeal from the Judgment of the Philadelphia Common Pleas Court No. 4, heard in Common Pleas No. 10, reviewed, a denial of his rights guaranteed by the 5th Amendment to the Constitution of the United States as embodied in the Fourteenth Amendment.

CONSTITUTIONAL PROVISION INVOKED.

Amendment V.

"No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use, without just compensation."

Amendment XIV.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE.

As the result of a fire at the Petitioner's home October 31, 1964 Action was initiated against the Aetna Casualty and Surety Company the insurer by a Summons in Assumpsit filed October 27, 1965 and served on the defendant November 1, 1965. Philadelphia C. P. No. 4, September Term, 1965, Case No. 2696.

The Petitioner filed a complaint in Assumpsit June 3, 1966 for the amount of $32,000.00, the limit of the insured insurance policy. June 24, 1966 the defendant filed their answer to the Petitioner's complaint. Case No. 2696.

January 3, 1967 the Petition filed his entry of Appearance to act as his own counsel in this matter. I. P. P.

The Petitioner filed a Petition for Special preference listing of his case No. 2696, June 8, 1967 which was allowed by the Administrative Judge of the Philadelphia Common Pleas Court, July 11, 1967 thereby closing all future discovery and pleadings.

The Petitioner initiated a second suit August 16, 1967 by a Complaint in Assumpsit for $100,000.00 which cause of action being of collateral issue for aforementioned suit No. 2696. Philadelphia C. P., June Term, 1967, Case No. 5528.

September 12, 1967 the defendant filed their answer to the Petitioner's Complaint. Case No. 5528.

The Petitioner sent the defendant a stipulation by agreement of counsel to consolidate the two above mentioned actions, September 8, 1967.

September 14, 1967 the defendant filed a rule on the Petitioner why the defendant may not file an amended answer to case No. 2696. The stipulation for consolidation was returned to the Petitioner, September 25, 1967 and

with the court's aproval, filed September 29, 1967. C. T. L. No. 38802.

Due to the special preference listing granted July 11, 1967, case No. 2696 was put in the jury trial pool September 28, 1967. The petitioner requested to see the calendar judge of the court in regard to the listing of case No. 2696 for trial in respect to the defendant's scheduled hearing of October 10, 1967 on their petition for leave to amend answer filed September 14, 1967. The calendar judge granted the defendant discovery time for case No. 5528 which was consolidated with case No. 2696 and the special listing for case No. 2696 was stricken for the defendant to complete his discovery. The order for a rule absolute to file an amended answer was filed October 10, 1967. As the result of this interlocutory order, the petitioner filed an appeal and affidavit in the Supreme Court of Pennsylvania. October 19, 1967 and a writ of certiorari was issued for the records of the lower court. No. 133, January Term, 1968.

November 17, 1967 the appellee filed their entry of appearance in the Supreme Court of Pennsylvania.

November 20, 1967 the Petitioner filed a petition for continuance to the April 1968 session at Philadelphia.

December 22, 1967 the Appelleee filed their answer to the Petitioner's petition for Continuance with New Matter. The Petitioner's copy was late mailing and by ordinary mail; therefore when received by the Petitioner he had only two days left to respond to the New Matter. The New Matter was the Appellee's request to Quash the Appeal; therefore, it had great significance and importance not only with the Petitioner's petition for Continuance but its effect upon the case No. 5528 in the lower court.

December 28, 1967 the Petitioner filed his reply to the appellee's New Matter.

January 9, 1968 the Supreme Court filed an order denying the Petitioner's petition for continuance and granting the Appellee's request by Quashing the Petitioner's Appeal, Per Curiam.

January 19, 1968 the Petitioner, Petitioned for Reconsideration which was denied February 19, 1968, per curiam.

REASONS FOR GRANTING WRIT.

It is well settled that the Fifth Amendment is made obligatory on the State Courts by the Fourteenth Amendment and includes not only the right of due process of law but also guarantees persons within its jurisdiction the equal protection of the laws.

Because the Petitioner is not an attorney and acting as his own counsel, he has suffered many indignities and setbacks in the course of due process of the law. The major setback being the interlocutory order of October 10, 1967 in the Philadelphia Common Pleas Court from which the Appeal to the Supreme Court of Pennsylvania arose.

The above mentioned order was a rule absolute for the defendant to file amended answer in case No. 2696 which changed the defendant's admissions in their answer of pertinent and material facts upon which case No. 5528 was based and initiated. This order did irreparable harm to the Petitioner by putting his legal position in case No. 5528 in jeopardy. Also, caused the special preference listing to be stricken and another delay in a long continuous series of delays of the trial by the defendant in this action. An interlocutory order is usually non-appealable until the case is heard and final judgment rendered in the lower court, but in this instance the order is of such significance and importance to case No. 5528 that the Petitioner's legal position is jeopardized to the extent the order has taken the place of final adjudication of the case without a trial and making any further hearing of this matter moot. The Petitioner requested continuance in view of the fact that a Writ of Certiorari was issued for the records of the lower court and the said records were not sent to the Supreme Court for review. Also, no opinion was filed by the lower court in this matter. The Petitioner can sight many irregu-

larities, violations and breaches of the rules of Civil procedure by the Appellee which have hindered the Petitioner in the presentation of his position in this action.

Because the Petitioner is not an attorney he needs time for discovery to protect his legal position and for proper presentation of his case. For example the delayed mailing by ordinary mail the Appellee's answer to the Petitioner's petition for continuance with new matter to quash the Petitioner's Appeal. The Petitioner had only two days to answer the New Matter, whereby the Petitioner needed discovery time in view of the significance and importance of the request to Quash the Petitioner's Appeal. Therefore, the Petitioner feels the continuance should have been granted.

In *Ungar v. Sarafite,* 376 U. S. 575 (1964), Mr. Justice White said at page 589:

> "Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend . . . an empty formality. Chandler v. Fretag, 348 U. S. 3. There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in circumstances present in every case, particularly in the reasons presented to the court at the time the request is denied."

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN J. SCARSELLETTI—I.P.P.,
Attorney for Petitioner.

APPENDIX.

IN THE
SUPREME COURT OF PENNSYLVANIA
FOR THE EASTERN DISTRICT.

No. 133—January Term, 1968.

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

C. P. No. 4 (Heard in C. P. No. 10) for the
County of Philadelphia, No. 2696,
Sept. Term, 1965.

October 19, 1967—Appeal filed.

JOHN J. SCARSELLETTI,
Appellant, I. P. P.

November 20, 1967. Petition of Appellant for Continuance to April 1968 Session at Philadelphia, filed.

ORDER.

January 9, 1968. Petition for Continuance Denied and Appeal having been taken from a Interlocutory Order, is Quashed.

PER CURIAM.

IN THE
SUPREME COURT OF PENNSYLVANIA
FOR THE EASTERN DISTRICT.

No. 133—January Term, 1968.

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

C. P. No. 4 (Heard in C. P. No. 10) for the
County of Philadelphia, No. 2696,
Sept. Term, 1965.

October 19, 1967. Appeal filed.

JOHN J. SCARSELLETTI,
Appellant, I. P. P.

January 19, 1968. Petition of Appellant for Reconsideration of Order of January 9, 1967 denying continuance and quashing Appeal, filed.

ORDER.

February 19, 1968. Denied.

PER CURIAM.

IN THE

COMMON PLEAS COURT #4

(HEARD IN COMMON PLEAS COURT #10)

October 10, 1967

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

AETNA CASUALTY & SURETY COMPANY,
Petitioner.

September 14, 1967. Rule on the Plaintiff why Defendant may not file an Amended answer in this matter—filed.

ORDER.

October 10, 1967. Rule absolute to file amended answer.

Per. HON. EDWARD J. BRADLEY.